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No. 00-209

IN THE SUPREME COURT OF THE UNITED STATES

VOLKSWAGEN OF AMERICA, INC.,

Petitioner,

v.

BRUCE S. SPERLING, *ET AL.*

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Texas

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC. IN SUPPORT OF THE PETITIONER

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MOTION OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC. FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF THE PETITIONER

Pursuant to Rule 37 of the Rules of this Court, the Product Liability Advisory Council, Inc. ("PLAC") respectfully requests leave to file the accompanying brief as *amicus curiae* in support of

the petition for writ of certiorari in the above-referenced case.*

PLAC is a non-profit corporation with 128 corporate members representing a broad cross-section of American industry. Its corporate members include manufacturers and sellers in a wide range of industries, from automobiles to electronics to pharmaceutical products. A list of PLAC's current corporate membership is attached as Appendix A. In addition, several hundred of the leading product liability defense attorneys in the country are sustaining (*i.e.*, non-voting) members of PLAC.

PLAC's primary purpose is to file *amicus curiae* briefs in important cases with issues that affect the development of product liability law and have potential impact on PLAC's members. PLAC has submitted numerous *amicus curiae* briefs in both state and federal courts of last resort, including this Court.

PLAC's members have a paramount interest in ensuring that civil justice in this country is meted out according to rules of fairness. When the civil justice system produces an unfair and arbitrary result, as it did in this case, the victim is often a business, particularly when the defendant is a large out-of-state or foreign corporate defendant.

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* Petitioner and two of the Respondents consented to the filing of the attached brief; a *pro se* Respondent did not consent.

This case is of significant interest to PLAC because it is a paradigm of unfairness. After a four-week trial in which the twelve-member jury *unanimously* found for petitioner, the trial court granted a new trial without explanation. Current Texas law not only permits such arbitrary and potentially prejudicial rulings, but provides no opportunity for appellate review of such trial court decisions – the most important safeguard against unfairness in the court system.

Texas's standardless system for granting new trials is presumptively unconstitutional because it denies litigants procedural due process safeguards that are provided by virtually all jurisdictions. Texas stands virtually alone in allowing a trial court broad discretion to grant a new trial without stating a reason. The federal courts, and courts in virtually all other states, provide their reasons when ordering a new trial. Moreover, an appeal is available (either immediately or after retrial) in the federal courts, and in the courts of other states, when a trial court grants a new trial. Due process requires Texas to adopt the same basic protections. As Justices Hecht and Owen of the Texas Supreme Court noted below, "To refuse to render judgment on a verdict without stating a reason is not in the interest of justice, but in the interest of injustice." *In re Volkswagen of Am., Inc.*, 43 Tex. Sup. Ct. J. 755, 2000 WL 566742, at *1 (Tex. May 11, 2000) (Hecht, J., joined by Owen, J., dissenting from the denial of the petition for mandamus).

As principal voices against arbitrary justice that affects industry, PLAC is well suited to demonstrate the effects of Texas's standardless system for ordering new trials and the reasons that system

violates the Due Process Clause of the Fourteenth Amendment. Accordingly, PLAC respectfully requests that its motion for leave to file the accompanying brief as *amicus curiae* be granted for these purposes.

Respectfully submitted,

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QUESTION PRESENTED

State trial courts in Texas have virtually unconstrained discretion to grant new trials in civil cases. When a new trial is ordered, the trial court is not required to offer any explanation for its decision, and the decision is not subject to appellate review at any point, either by appeal or by mandamus. In these respects, the Texas system denies litigants procedural safeguards that are provided in the federal courts and in the courts of every other State, where a trial court's decision to grant a new trial may be challenged on appeal.

The question in this case is whether the Texas system, which grants the trial court complete and unreviewable discretion to award a new trial, comports with the requirements of the Due Process Clause of the Fourteenth Amendment.

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BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC. IN SUPPORT OF THE PETITIONER

INTEREST OF *AMICUS CURIAE*

The Product Liability Advisory Council, Inc. ("PLAC") is a non-profit corporation with 128 corporate members representing a broad cross-section of American industry.* Its corporate

* Pursuant to Rule 37.6, counsel state that this brief was not authored in whole or in part by any (continued...)

members include manufacturers and sellers in a wide range of industries, from automobiles to electronics to pharmaceutical products. (See Appendix A). In addition, several hundred of the leading product liability defense attorneys in the country are sustaining (*i.e.*, non-voting) members of PLAC.

PLAC's primary purpose is to file *amicus curiae* briefs in important cases such as this one with issues that affect the development of product liability law and have potential impact on PLAC's members. PLAC has submitted numerous *amicus curiae* briefs in both state and federal courts of last resort, including this Court.

PLAC's members have a paramount interest in this case. When the civil justice system goes awry and produces an unfair result, as it did in this case, the victim is often a business or manufacturing interest. Compounding the problem, unfair application of a rule that gives judicial decisionmakers excessive and unreviewable discretion to grant a new trial most often will be felt by out-of-state or foreign litigants, particularly corporations or other large institutions, such as Volkswagen. *See TXO Prod. Corp. v. Alliance Resources Corp.*, 504 U.S. 443, 464 (1993) (noting that the risk of a verdict influenced by prejudice is "a risk that is of special concern when the defendant is a nonresident."); *id.* at 491 (O'Connor, J., dissenting)

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party. Funds for this brief were provided by the named *amicus curiae*.

(the risk of a biased judgment is particularly great when the defendant is a large corporation).

This case is a paradigm of unfairness. After a four-week trial in which the twelve-member jury *unanimously* found for petitioner, the trial court granted a new trial without explanation.

Texas is essentially the only state which gives its trial judges "unfettered" and unreviewable discretion to overcome the deference traditionally afforded jury verdicts. Texas trial judges are given unbridled power to order a new trial for *any* reason, and without any explanation. The adverse consequences are obvious: this practice imposes substantial, unnecessary, repetitive, and unrecoverable legal costs on litigants and the judicial system, and wastes time to the prejudice of both plaintiffs and defendants. Most disturbingly, it tells parties to civil suits that they cannot rely upon a concededly lawful and error-free verdict of their peers.

It is PLAC's view that the importance of this case warrants consideration by this Court to send a clear message that due process does not tolerate lawless approaches to civil justice.

STATEMENT OF THE CASE

This case arises out of an automobile accident in Hidalgo, Texas. Haley Sperling, driving a Volkswagen Passat manufactured by petitioner, was passing a vehicle driven by Rudy Garza when the vehicles bumped twice; Sperling's vehicle swerved into opposing traffic lanes, colliding head-on with a vehicle driven by Diana Guerra. Sperling and Guerra were both killed in the accident, and

Guerra's daughter, a passenger in her car, was seriously injured. The Sperling and Guerra families, respondents in this Court, brought suit against petitioner Volkswagen of America, Inc., Garza, and others. All claims except those against Garza and Volkswagen were either settled or dismissed before trial.

At trial, respondents claimed that the accident was caused by the failure of the left rear wheel on Sperling's Volkswagen. Volkswagen claimed that the wheel did not fail, but was damaged in the accident. After a four-week trial at which thirty-six witnesses (including eyewitnesses) testified, the jury *unanimously* declined to enter a verdict that the Volkswagen vehicle was defective or that the accident was caused by Volkswagen, Sperling, or Garza. The trial court rendered judgment on the verdict that respondents take nothing.

Respondents moved for a new trial on the ground that the verdict was against the great weight and preponderance of the evidence. The trial court granted their motion, stating in its order that "the Court is of the opinion that a new trial should be granted in the interest of justice." The court offered no other explanation for its decision. The court later denied petitioner's request for rehearing without opinion or explanation.

Petitioner sought a writ of mandamus in the Texas Thirteenth Court of Appeals at Corpus Christi to require the trial court to explain its decision to order a new trial. The writ petition was denied without opinion.

Petitioner subsequently sought mandamus in the Texas Supreme Court. Respondents opposed

mandamus relief, arguing, among other things, that orders granting new trials are not subject to appellate review in Texas by appeal or mandamus. The petition was denied without opinion by a divided court.

Justice Hecht, joined by Justice Owen, wrote a powerful dissent from the denial of the petition for mandamus. Justice Hecht stated:

> I continue to believe . . . that while trial courts should have broad discretion to grant a new trial in the interest of justice, that discretion should not be insulated from all review, and trial courts should be required to state reasons for their rulings. It is never too much, in my view, to require a court to state reasoned basis for its ruling. To refuse to render judgment on a verdict without stating a reason is not in the interest of justice, but in the interest of injustice.

In re Volkswagen of Am., Inc., 43 Tex. Sup. Ct. J. 755, 2000 WL 566742, at *1 (Tex. May 11, 2000) (Hecht, J., joined by Owen, J., dissenting).

Justice Hecht's dissent also referred to views he and Justice Owen expressed some months earlier when they dissented from another decision by the Texas Supreme Court denying mandamus relief in a virtually identical case involving the grant of a new trial against a different out-of-state automobile manufacturer. *See In re Bayerische Motoren Werke, AG*, 8 S.W.3d 326 (Tex. 2000). As in this case, the trial court's decision followed a lengthy product

liability trial which resulted in a jury verdict in favor of the defendant. In his *BMW* dissent, Justice Hecht concluded: "I know of no reason why a trial court's exercise of discretion in granting a new trial should ever be insulated from all review." *Id.* at 329.

Justice Hecht added that:

> a reasoned explanation for a court's ruling does not curb either the sound exercise of discretion or the cause of justice; rather, it helps guarantee both. There are many reasons why a trial court may grant a new trial. The expectation that at least one reason should be given is not exorbitant. The refusal to give even one is dangerously peremptory.

Id. at 331.

REASON FOR GRANTING THE PETITION

TEXAS'S GRANT TO TRIAL JUDGES OF UNLIMITED, STANDARDLESS, AND UNREVIEWABLE DISCRETION TO VACATE JURY VERDICTS VIOLATES DUE PROCESS

"The touchstone of due process is protection of the individual against arbitrary action of government." *Daniels v. Williams*, 474 U.S. 327, 331 (1986) (quoting *Dent v. West Virginia*, 129 U.S. 114, 123 (1889)); *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)).

This case presents a paradigm of arbitrariness. After a four-week trial at which thirty-six witnesses

(including eyewitnesses) testified, a duly constituted jury of twelve Texas citizens *unanimously* found in favor of both the petitioner and another defendant. There is no evidence that the jury verdict was based on error. To the contrary: the verdict was a reasonable outcome given the evidence. Yet, the judge set aside the verdict, offering no explanation. The court of appeals and a majority of the Texas Supreme Court refused to review the decision, since Texas law gives trial courts "broad discretion" in the granting of new trials "in the interest of justice and fairness." *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 918 (Tex. 1985).

This case illustrates the sheer lawlessness, inherent in Texas's system for reviewing jury verdicts. The Texas procedure invites trial judges to override the judgment of the people – as represented by a jury of their peers – on a whim. No reasons need be provided, no standards need be observed, and no review is permitted. Nor need there be any correlation between facts, law and outcome. The trial court's decision – however capricious, illogical or (in this case) inexplicable – is final. *See Cummins v. Paisan Construction Co.*, 682 S.W.2d 235, 236 (Tex. 1984) ("An order granting a new trial . . . is not subject to review either by direct appeal from an order, or from a final judgment rendered after further proceedings in the trial court.") (per curiam) (quoting *Burroughs v. Leslie*, 620 S.W.2d 643, 644 (Tex. App. 1981)).

Nothing prevents a Texas trial judge in this case or others from vacating the next jury verdict, and the next, and so on, until he or she obtains a result conducive to his or her own predilections, whatever

those may be.[1] A judge who exercises this "plenary" (or "absolute") power" can nullify judgments fairly won and force parties to settle cases in which they deserve the entry of judgment in their favor. *American Motorists Insurance Co. v. Sells*, 747 S.W.2d 27, 29 (Tex. App. 1988). As Justice Kennedy once stated about another state's reliance on subjective standards for judicial review of jury punitive damages verdicts:

> This type of review, far from imposing meaningful, law-like restraints on jury excess, could become as fickle as the process it is designed to superintend.

TXO, 504 U.S. at 467 (Kennedy, J., concurring in part and concurring in the judgment).

It should come as little surprise that the Texas procedure invites "extreme results" of the sort that "jar one's constitutional sensibilities." *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1, 18 (1991). Only Texas and South Carolina allow a trial court such extraordinarily broad discretion to grant a new trial on its own initiative without stating a reason. *See, e.g., In re Bayerische Motoren Werke,*

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[1] Texas law allows a trial judge to grant only two new trials based on evidentiary insufficiency, *see* Tex. R. Civ. P. 326, but imposes no such limits on the number of new trials that may be ordered on other grounds – including unspecified grounds.

AG, 8 S.W.3d at 329; *Folkens v. Hunt*, 387 S.E.2d 265, 267 (S.C. 1990).[2]

PLAC submits that such a secretive and unusual procedure violates the cardinal tenets of due process upon which our system of justice depends. *See TXO*, 509 U.S. at 457 (history and "widely shared practice" guide the Court in "determining whether a particular state practice so departs from an accepted norm as to be presumptively violative of due process"). The Court should review this case and hold, at a minimum, that due process requires that *some* guidelines or checks be in place to circumscribe a Texas trial judge's decision whether to overturn a jury verdict – guidelines which were concededly absent in this case.

PLAC recognizes that the States have historically enjoyed considerable latitude in shaping their civil justice schemes. But such latitude has never been boundless. This Court has taken pains to affirm that all American governmental processes, including in particular judicial processes, are constitutionally circumscribed by "general concerns of reasonableness and adequate guidance." *Haslip*, 499

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[2] Arkansas, Nevada, and New York do not require the trial court to state its reasons, but restrict its discretion. *See Ray v. Green*, 839 S.W.2d 515, 516 (Ark. 1992); *Brascia v. Johnson*, 781 P.2d 765, 767 (Nev. 1989); *Nicastro v. Park*, 495 N.Y.S.2d 184, 188 (N.Y. 1985). *See generally In re Bayerische Motoren Werke, AG*, 8 S.W.3d at 329 n.22 (collecting cases regarding need for trial court to explain its rationale when granting motion for new trial).

U.S. at 21. *See also TXO*, 509 U.S. at 471 (Scalia, J., joined by Thomas, J., concurring in the judgment) (noting that "'procedural due process' requires judicial review of punitive damages awards for reasonableness.").

For example, in *Honda Motor Co., Ltd. v. Oberg*, 512 U.S. 415 (1994), this Court held that Oregon law violated due process because it failed to provide for postverdict review of the size of punitive damages awards. The Court was guided by the fact that both the federal courts and the courts in every other state permitted such review. *See id.* at 426. Importantly, even though the procedure at issue existed in only one state (Oregon), the Court correctly chose to step in to right a clear wrong. It should do so again here to correct Texas's procedure for granting new trials.

The touchstone of the Court's decisions in *Haslip*, *TXO*, and *Honda Motor* is hardly unique to punitive damages verdicts: "A concern [for] reasonableness is what due process essentially requires." *Honda Motor*, 512 U.S. at 437 (quoting *TXO*, 509 U.S. at 458, which itself quoted *Haslip*, 499 U.S. at 18). *See also BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996) (holding punitive damages award unconstitutionally excessive). The Court has often had occasion to emphasize that government at all levels within our constitutional scheme must operate within "a zone of reasonableness" (*FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 585 (1942)); that laws must as a matter of due process "provide explicit standards for those who apply them" (*Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)); and that the importance of procedural safeguards is magnified where a factfinder possesses "unusual discretion" to reach dispositive

determinations (*Santosky v. Kramer*, 455 U.S. 745, 762 (1982)).

To say that the Texas procedure for granting new trials is unreasonable or that Texas trial courts possess "unusual discretion" in reviewing and canceling jury verdicts is an understatement. The discretion of Texas trial courts is unlimited. In this respect, it can fairly be said that this case presents an even more extreme example of lawlessness than the punitive damages schemes under scrutiny in *Haslip* and its progeny.[3]

None of the procedural safeguards which saved Alabama's punitive damages system from constitutional attack in *Haslip* are present here. The Alabama jury instructions at issue in *Haslip* were found to provide standards which at least "enlightened the jury" on the "nature and purpose" of punitive damages. *Haslip*, 499 U.S. at 21. By contrast, Texas state courts have "unfettered discretion" to grant a new trial for any reason, or for no reason at all. *Toyota Motor Co. v. Wood*, 1992 WL 49904, *1 (Tex. App. Mar. 12, 1992) (citing

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[3] *See Mattison v. Dallas Carrier Corp.*, 947 F.2d 95 (4th Cir. 1991) (setting aside South Carolina's punitive damages scheme); *Johnson v. Hugo's Skateaway*, 949 F.2d 1338 (4th Cir. 1991) (Virginia procedure; same); *Garnes v. Fleming Landfill, Inc.*, 432 S.E.2d 897 (W. Va. 1991) (West Virginia procedure; same) *Alexander & Alexander, Inc. v. B. Dixon Evander & Assocs., Inc.*, 596 A.2d 687 (Md. Ct. Spec. App. 1991), *cert. denied*, 605 A.2d 137 (Md. 1992) (Maryland procedure; same).

Champion Int'l Corp. v. Twelfth Court of Appeals, 762 S.W.2d 898, 899 (Tex. 1988), and *Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 918 (Tex. 1985), *cert. denied*, 504 U.S. 991 (1992)).

Moreover, the Alabama Supreme Court had in place post-trial procedures for scrutinizing and, where necessary, overturning the jury's verdict.[4] No such procedures were available to petitioner in this case.

Finally, the Alabama Supreme Court undertook both a comparative and substantive analysis to "ensure that the [punitive] award does 'not exceed an amount that will accomplish society's goals of punishment and deterrence.'" *Haslip*, 499 U.S. at 21. By contrast, the Texas system immunizes the trial court's decision entirely from appellate review. What sets this case apart, then, is not that Texas has insufficient legal standards governing the scrutiny of jury verdicts, or insufficient opportunities for appellate review, but that Texas has dispensed with *both* standards and review mechanisms *altogether*.[5] The result is a system of "justice"

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[4] The Alabama Supreme Court set forth specific factors for the trial court to consider and required trial courts to note *in the record* their reasons for sustaining a jury verdict or setting it aside. *Haslip*, 499 U.S. at 21.

[5] In *Haslip*, this Court contrasted Alabama's detailed appellate guidelines with the punitive damages schemes of states that would set aside or modify an award only if it was 'manifestly and grossly excessive,' or 'evince[d] passion, bias or

(continued...)

without rhyme or reason, one which leaves no room for the rule of law.

On a practical basis, arbitrary judicial procedures such as the one at issue here have a substantial and detrimental impact on American industry, as they are likely to be disproportionately imposed on out-of-state or foreign defendants, particularly corporations or other large institutions, like Volkswagen. *See Garnes v. Fleming Landfill, Inc.*, 413 S.E.2d 897, 906 (W. Va. 1991) ("the desire to 'help your own'" means "local courts naturally will favor local plaintiffs over out-of-state (often faceless, publicly held) corporations . . ."); *TXO*, 509 U.S. at 486 (noting potential of bias of factfinder toward local plaintiffs as compared to "unsympathetic and wealthy out-of-state defendants"); *Blankenship v. General Motors Corp.*, 406 S.E.2d 781 (W. Va. 1991) (same).

This spectre, coupled with spiraling liability, has in some cases discouraged manufacturers from developing and marketing new and useful products. *See, e.g.*, S. Rep. No. 105-32, at 7-13 (1997) (discussing how beneficial products such as the morning sickness drug Bendectin, DPT vaccine, and supplies of raw materials needed to manufacture medical devices were withdrawn from the U.S.

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prejudice on the part of the jury so as to shock the conscience.'" *See Haslip*, 499 U.S. at 21 n.10. Since *Haslip*, the Fourth Circuit of Appeals has set aside such standards as analogous to those questioned in *Haslip*. *See Mattison, supra*; *Johnson, supra*. Even these schemes provided for *some* appellate review; Texas provides for *none*.

market as a result of concerns over unwarranted product liability litigation); Peter Huber & Robert Litan, *The Liability Maze: The Impact of Liability on Safety and Innovation*, at 7 (Brookings Inst. 1991) (reporting on American Medical Association study finding that "[i]nnovative new products are not being developed or are being withheld from the market because of liability concerns or inability to obtain adequate insurance").[6]

The climate of uncertainty also puts American businesses at a sizeable disadvantage in their attempts to compete with foreign enterprise. *See* Alfred W. Cortese, Jr. & Kathleen L. Blaner, *The Anti-Competitive Impact of U.S. Product Liability Laws: Are Foreign Businesses Beating Us At Our Own Game?*, 9 J. L. & COM. 167, 168 (1989) (as a result of U.S. tort liability system, "American manufacturers bring more costly and less advanced products to the international markets, losing the competitive edge"); S. Rep. No. 102-321, at 9-10 (1991) ("American manufacturers and product sellers generally pay product liability insurance rates which are 20 to 50 times higher than those of foreign competitors. This disparity is attributable in large part to the uncertainties and costs of the American tort litigation system"); H.R. Rep. No. 100-748, pt. 1, at 23-24 (1988) ("Without having to absorb

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[6] See also American Law Institute, Enterprise Responsibility for Personal Injury – Reporters' Study (1991); Walter Olson, The Litigation Explosion (1991); Peter Huber, Liability: The Legal Revolution and its Consequences (1988).

the costs of product liability exposure for most of their sales, foreign corporations have an obvious price advantage. In Japan and Europe, product liability laws are more stable, litigation less frequent, and large damage awards uncommon.").

Moreover, the Texas procedure imposes unnecessary, repetitive, and unrecoverable costs on litigants and the judicial system, and wastes time to the prejudice of both parties and the court. The trial in this case lasted over four weeks – all for naught. Apart from the practical and financial hardships, the consequences of such a judicial process run amok are profound.

First, the Texas scheme invites trial judges in effect to displace juries entirely. Under the Texas arrangement, a judge may override a jury's considered judgment at any time for any reason, regardless of the merits of the verdict, and may order that the case be retried if the "desired" result is not obtained. The judge thus becomes the factfinder, even in those cases in which the parties are entitled to a jury.

Ironically, had this case been tried to a judge, the Texas Rules of Civil Procedure (like the Federal Rules of Civil Procedure) would have required the court, upon request by either party, to "state in writing its findings of fact and conclusions of law." Tex. R. Civ. P. 297; Fed. R. Civ. P. 52. The trial court's decision would then have been subject to appellate review, as it would be in the federal system and in the courts of any other state. Yet the Texas procedure strips away all of these procedural safeguards when a trial judge decides to negate a

jury verdict. This procedure makes a mockery of the jury system.

Second, by conferring on trial judges what can only be described as autocratic power in resolving jury cases, the Texas scheme divests the judicial system of its historic role as the guarantor of reasoned decisionmaking and fair play. Our civil justice system is built on these values: it presupposes that one may be deprived of life, liberty or property only after careful deliberation and for sound reasons.[7] And it is the Due Process Clause which, "[b]y requiring the government to follow

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[7] Long ago, this Court described the jury's role:

> Twelve men of the average of the community, comprising men of education, and men of little education, men of learning and men whose learning consists only in what they have themselves seen and heard, the merchant, the mechanic, the farmer, the laborer; these sit together, consult, apply their separate experience of the affairs of life to the facts proven, and drawn a unanimous conclusion. This average judgment thus given it is the great effort of the law to obtain. It is assumed that twelve men know more of the common affairs of life than does one man, that they can draw wiser and safer conclusions from admitted facts thus occurring than can a single judge.

Sioux City & Pacific R.R. v. Stout, 84 U.S. (17b Wall.) 657 (1873).

appropriate procedures . . . promotes fairness in such decisions." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). Texas's grant to trial judges of unbridled and unreviewable authority to vacate jury verdicts defeats these objectives.

Thus, petitioner here, like any other party on the wrong end of a vacated jury verdict in Texas, has no way of knowing, and no reason for believing, that it was deprived of a favorable jury verdict for good cause, or for any cause. Indeed, since no explanation was provided by the trial judge in this case, and since no legal error was ever alleged or established, one can only speculate as to the rationale underlying the trial judge's decision. Worse still, under the Texas scheme, the rationale – whether it be motivated by political, social, ideological, or other concerns – is *irrelevant*.

Finally, the unlimited discretion which Texas confers on trial judges in reviewing jury verdicts cannot help but undermine confidence in the judicial process at a time when the courts' effectiveness in meting out efficient justice is increasingly the subject of serious question. Our society traditionally has placed substantial confidence in the courts to distribute justice. The Texas procedure – whereby a judge can deem a verdict "perfectly reasonable" on Wednesday yet set it aside on Friday without explanation – erodes that confidence. As one federal jurist stated:

> In the process of gaining public acceptance for the imposition of sanctions, the role of the jury is highly significant. The jury is a sort of ad hoc parliament convened from the

> citizenry at large to lend respectability and authority to the process. . . . Any erosion of citizen participation in the sanctioning system is in the long run likely, in my view, to result in a reduction in the moral authority that supports the process.

In re Japanese Elec. Prods. Antitrust Litig., 631 F.2d 1069, 1093 (3d Cir. 1980) (Gibbons, J., dissenting).

While this Court cannot and should not be asked to constitutionalize state trial systems, it must step in where a state casts aside the rule of law in favor of "unfettered discretion," to use Texas's own description, or "unlimited judicial discretion," as put by this Court. *Haslip*, 499 U.S. at 18. The Court should step in here.

CONCLUSION

Texas's procedure is untenable in permitting trial court judges "unfettered" and unreviewable discretion to vacate a jury verdict. The United States Constitution does not condone such arbitrary and boundless judicial discretion. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

PRODUCT LIABILITY ADVISORY COUNCIL, INC.
CORPORATE MEMBERS

3M
Allegiance Healthcare Corporation
Altec Industries
American Home Products Corporation
American Medical Systems, Inc.
American Suzuki Motor Corporation
Andersen Corporation
Andrx Corporation
Anheuser-Busch Companies, Inc.
Appleton Papers, Inc.
ARCO
Aventis Pharmaceuticals
BASF Corporation
Baxter International, Inc.
Bayer Corporation
BIC Corporation
Biomet, Inc
Black & Decker (U.S.) Inc.
BMW of North America, Inc.
Boeing Company, The
Bombardier Inc., Recreational Products
Bridgestone/Firestone, Inc.
Briggs & Stratton
Brown and Williamson Tobacco Company
Brown-Forman Corporation
Budd Company, The
C.R. Bard, Inc.
Caterpillar, Inc.
Chevron Corporation
CLARK Material Handling Company
Coleman Company, Inc., The

Compaq
Continental General Tire, Inc.
Cooper Tire and Rubber Company
Coors Brewing Company
DaimlerChrylser Corporation
Dana Corporation
Deere & Company
Dow Chemical Company, The
E.J. Gallo Winery
E.I. Du Pont de NeMours and Company
Eaton Corporation
Eli Lilly and Company
Emerson Electric Co.
Estee Lauder Companies
Exxon Mobil Corporation
FMC Corporation
Ford Motor Company
Freightliner Corporation
Gates Corporation, The; The Stant Corporation
General Electric Company
General Motors Corporation
Georgia-Pacific Corporation
Glaxo Wellcome Inc.
Goodyear Tire & Rubber Company, The
Great Dane Limited Partnership
Guidant Corporation
Harley-Davidson Motor Company
Harsco Corporation, Gas & Fluid Control Group
Heil Company, The
Henkel Corporation
Honda North America, Inc.
Hyundai Motor America
International Paper Company
International Truck and Engine Corporation
Isuzu Motors America, Inc.
Johnson & Johnson

Johnson Controls, Inc.
Joseph E. Seagram & Sons, Inc.
Kawasaki Motors Corp., U.S.A.
Kolcraft Enterprises, Inc.
Kraft Foods, Inc.
Lucent Technologies Inc.
Mack Trucks, Inc.
Makita U.S.A., Inc.
Mazda (North America), Inc.
Medtronic, Inc.
Melroe Company
Mercedes-Benz of North America, Inc.
Michelin North America, Inc.
Miller Brewing Company
Mitsubishi Motors R. & D. of America, Inc.
Monsanto Company/G.D. Searle & Co.
Motor Coach Industries International, Inc.
Niro Inc.
Nissan North America, Inc.
O.F. Mossberg & Sons, Inc.
Otis Elevator Co.
PACCAR Inc.
Panasonic Company
Pentair, Inc.
Pfizer Inc.
Philip Morris Companies, Inc.
Polaris Industries, Inc.
Porsche Cars North America, Inc.
Procter & Gamble Co., The
Raymond Corporation, The
Raytheon Aircraft Company
Rheem Manufacturing
RHI Refractories America
RJ Reynolds Tobacco Company
Rover Group, Ltd.
Schindler Elevator Corp.

SCM Group USA, Inc.
Sears, Roebuck and Company
Shell Oil Company
Sherwin-Williams Company, The
Siemens Corporation
Smith & Nephew, Inc.
Snap-on Incorporated
Sofamor Danek Group, Inc.
Solutia Inc.
Sturm, Ruger & Co., Inc.
Subaru of America
Synthes (U.S.A.)
Textron Inc.
Thomas Built Buses, Inc.
Toro Company, The
Toshiba America Incorporated
Toyota Motor Sales, USA, Inc.
TRW Inc.
UST (U.S. Tobacco)
Volkswagen of America, Inc.
Volvo Cars of North America, Inc.
Vulcan Materials Company
Whirlpool Corporation
Wilbur-Ellis Company
Yamaha Motor Corporation, U.S.A.